

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF IDAHO

JUN - 7 2004

Cameron S. Burke  
 Clerk, Idaho

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

PEDRO DUENAS-RIVERA,  
 aka JOSE DIAZ, )

Defendant. )

Case No. CR-04-85-E-BLW

ORDER FOR EXCLUDABLE  
 TIME AND ALLOWING  
 WITHDRAWAL OF COUNSEL  
 AND DIRECTING APPOINTMENT  
 OF NEW COUNSEL

The Court has before it a motion to continue trial filed by defendant along with a motion to withdraw as counsel. The motion states that the defendant desires to have new counsel appointed and the Court finds good cause exists to do so. The Court will advise the defendant, however, that there is no absolute right to counsel of one's own choice. *Wheat v. United States*, 486 U.S. 153 (1988). Further requests for changes in representation will be reviewed very carefully.

Trial is set to start in about a week. By the time new counsel is appointed, that counsel will have only a few days at most to prepare for trial. Given these facts, it is understandable that defendant seeks a continuance of his trial for at least 60 days to give his new counsel time to prepare a defense. The Court finds that a

continuance is reasonable and will grant the motion.

Under all these circumstances, the Court finds that a continuance is needed to give defense counsel an opportunity to provide an effective defense. Thus, a continuance is warranted under 18 U.S.C. § 3161(h)(8)(B)(iv), which authorizes a finding of excludable time when the refusal to grant a continuance would “deny counsel for the defendant . . . the reasonable time necessary for effective preparation . . . .” Under these circumstances, the interests of justice in allowing the defense time for effective preparation outweighs the Defendant’s and the public’s interest in a speedy trial under 18 U.S.C. § 3161(h)(8)(A).

Trial will be reset for August <sup>30</sup>~~16~~, 2004 at 1:30 p.m. in Pocatello, Idaho.

The Court finds that the period of time between the present trial date and the new trial date is excludable time under the Speedy Trial Act. Accordingly,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to withdraw and motion for continuance (Docket Nos. unassigned) filed by Defendant be, and the same is hereby, GRANTED, and that the present trial date be VACATED, and that a new trial be set for August <sup>30</sup>~~16~~, 2004, at 1:30 p.m. in the Federal Courthouse in Pocatello, Idaho.

IT IS FURTHER ORDERED, that the period of time between the prior trial date and the new trial date be deemed EXCLUDABLE TIME under the

Speedy Trial Act, 18 U.S.C. §3161(h)(8)(A).

IT IS FURTHER ORDERED, that the Clerk of the Court is hereby directed to appoint new counsel to represent the defendant.

IT IS FURTHER ORDERED, that the pretrial conference shall be held on <sup>19</sup> ~~August 7~~ <sup>10:00</sup> ~~at 9:00 a.m.~~ in the Federal Courthouse in Pocatello, Idaho.

IT IS FURTHER ORDERED, that the Defendant shall file all pretrial motions on or before July 1, 2004.

IT IS FURTHER ORDERED, that the Motion to Suppress is hereby deemed MOOT. (Docket No. 5).

DATED this 7<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
B. LYNN WINMILL  
Chief Judge, United States District Court

United States District Court  
for the  
District of Idaho  
June 7, 2004

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 4:04-cr-00085

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Michael Joseph Fica, Esq. 1-208-478-4175  
US ATTORNEY  
801 E Sherman  
Pocatello, ID 83201

Pedro Duenas-Rivera  
INTERPRETER  
Brett Allison  
599-3 John Adams Court  
Idaho Falls, ID 83401

David N Parmenter, Esq. 1-208-785-4858  
PO Box 700  
Blackfoot, ID 83221

U.S. Marshal  
HAND DELIVERED


Probation  
HAND DELIVERED

✓  
\_\_\_\_ Chief Judge B. Lynn Winmill  
\_\_\_\_ Judge Edward J. Lodge  
\_\_\_\_ Chief Magistrate Judge Larry M. Boyle  
\_\_\_\_ Magistrate Judge Mikel H. Williams

Visiting Judges:  
\_\_\_\_ Judge David O. Carter  
\_\_\_\_ Judge John C. Coughenour  
\_\_\_\_ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 6-7-04

BY:   
(Deputy Clerk)